

(KRM)

07-14-45

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

In the Matter of

~~Cellomer Corporation~~

ID # NJD048797195

Respondent.

Proceeding Under Section 3008 of the  
Solid Waste Disposal Act, as amended.

COMPLAINT, COMPLIANCE ORDER,  
AND NOTICE OF OPPORTUNITY  
FOR HEARING

Docket No. II RCRA-82-0110

COMPLAINT

This administrative proceeding is instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended, 42 U.S.C. §6901 et seq. ("the Act"). [Note: Among the statutes amending the Act is the Resource Conservation and Recovery Act, 90 Stat. 2795, P.L. 94-580 (1976).]

The Director of the Enforcement Division of the U.S. Environmental Protection Agency ("EPA"), Region II, Complainant in this proceeding, has determined that Respondent, Cellomer Corporation has violated Section 3004, 3005, and 3010 of the Act, 42 U.S.C. §6924, 6925, and 6930 respectively and the regulations promulgated thereunder, as hereinafter specified:

1. Respondent owns and operates a facility located at 46 Albert Avenue, Newark, New Jersey 07105 ("the facility").

2. By notification dated August 11, 1980. Specifically, Respondent notified EPA that it generates and treats, stores, or disposes of hazardous waste, as that term is defined in Section 1004(5) of the Act, 42 U.S.C. §6904(5) and in 40 CFR §261.3. Respondent has not requested a permit to conduct its hazardous waste activities as required by Section 3005 of the Act.

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3. On or about September 1, 1981, an inspection of the facility was conducted by duly-designated representatives of EPA pursuant to Section 3007 of the Act, 42 U.S.C. §6927. Said inspection was conducted for the purpose of enforcing the EPA regulations for hazardous waste management, 40 CFR Parts 260 through 265 (published in 45 Fed. Reg. 33063 et seq., May 19, 1980), promulgated pursuant to Subtitle C of the Act, 42 U.S.C. §6921 et seq.

4. The above-referenced inspection revealed that Respondent's facility was being used for the generation and storage of hazardous waste.

5. Section 3005 of the Act and 40 CFR §122.22 requires all owners of hazardous waste treatment, storage or disposal ("TSD") facilities to submit a RCRA permit application to the Regional Administrator of the applicable EPA Regional office.

6. The above-referenced inspection revealed that storage of hazardous waste containers and tanks was taking place at Respondent's facility. These hazardous wastes included spent solvents, flammable alkyd resins and mineral spirits. This activity requires the submittal of a RCRA Part A permit application pursuant to 40 CFR §122.22. Respondent has to date failed to submit such permit application and is therefore in violation of 40 CFR §122.22.

7. 40 CFR §265.31 requires that a TSD facility be maintained to minimize the possible release of hazardous waste into the environment. During the above-referenced inspection, spilled hazardous waste (specifically, alkyd resins and waste solvents) was noted on the soil throughout an unpaved area where drums and a series of subsurface tanks, including a waste tank, are located. Respondent is therefore in violation of 40 CFR §265.31.

8. 40 CFR §265.171 provides that if a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator of the hazardous waste facility must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with 40 CFR Part 265. At the time of the above-referenced inspection, approximately 20 drums storing hazardous flammable alkyd resin wastes were leaking, rusting, uncovered and in poor condition. Respondent had failed to transfer the wastes in these drums to other drums which were in good condition, and had failed to manage these drums in any other appropriate manner. Respondent is therefore in violation of 40 CFR §265.171.

9. 40 CFR §262.11 requires that any person who generates any solid waste "must determine if that waste is a hazardous waste". This determination was to have been done by either: (1) testing the waste according to the methods set forth in Subpart C of 40 CFR Part 261, or (2) applying knowledge of the hazard characteristic of the waste in light of the materials or the process used. Communications with Respondent indicate that no testing has been performed on

a filter aid which contains varnish and alkyd resins and is being disposed of as domestic waste. No additional determination has been made as to whether the waste is hazardous. Respondent is therefore in violation of 40 CFR §262.11.

#### PROPOSED CIVIL PENALTY

In view of the above-cited violations, and pursuant to the authority of Section 3008 of the Act, Complainant herewith proposes the assessment of a civil penalty in the amount of nineteen thousand dollars (\$19,000) against Cellomer Corporation for the violations specified hereinabove as follows:

for the violation of 40 CFR §122.22 :	\$2,500
for the violation of 40 CFR §265.31 :	7,000
for the violation of 40 CFR §265.171:	7,000
for the violation of 40 CFR §262.11 :	<u>2,500</u>
TOTAL PENALTY	\$19,000

#### COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of the Act, Complainant herewith issues the following Compliance Order against Respondent herein:

Respondent shall, by no later than thirty (30) days after the effective date of this Order, cease to treat, store or dispose of any hazardous waste at the facility. Thereafter continued operation of the site as a hazardous waste facility shall therefore be contingent upon Respondent requesting authority to continue such operating and the issuance of a subsequent compliance order by Complainant to Respondent setting forth the conditions of any such continued operation. Respondent, in compliance with this order shall perform the following:

1. Respondent shall, by no later than thirty (30) days after the effective date of this Order submit a Part A Permit application for hazardous waste activities at the facility in compliance with 40 CFR §122.22.

2. Respondent shall, by no later than thirty (30) days after the effective date of this Order maintain the facility to minimize the possible release of hazardous waste into the environment. Specifically, spills and run-off of hazardous wastes in the tank storage area, and soils contaminated thereby, must be removed in compliance with 40 CFR §265.31.

3. Respondent shall, by no later than thirty (30) days after the effective date of this Order transfer hazardous waste from containers which are leaking, badly damaged, or corroded through to containers which are in good condition in compliance with 40 CFR §265.171.

4. Respondent shall, by no later than thirty (30) days after the effective date of this Order determine whether its filter aid containing varnish and alkyl resins is a hazardous waste in accordance with 40 CFR §262.11. Specifically, a determination shall be made as to whether the filter aid has the hazardous waste characteristics of ignitability or EP toxicity pursuant to 40 CFR Part 261 Subpart C.

#### NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(a)(3) of the Act, a violator failing to take corrective action within the time specified in a Final Compliance Order is liable for a civil penalty of up to \$25,000 for each day of continued noncompliance. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator pursuant to the authority of the Act.

#### NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in Section 3008(b) of the Act, and in accordance with EPA's Consolidated Rules of Practices Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR Part 22, 45 Fed. Reg. 24360 (April 9, 1980) (a copy of which accompanies this Complaint, Compliance Order, and Notice of Opportunity for Hearing), you have the right to request a hearing to contest any material fact set out in the Complaint, or to contest the appropriateness of the proposed penalty, or the terms of the Compliance Order. (Consistent with the provisions of Section 3008(b) of the Act, the hearing provided will be noticed and open to the general public, should you specifically request such a public hearing. In the absence of such a specific request, however, public notice of a scheduled hearing will not be published.)

To avoid being found in default, and having the proposed civil penalty assessed and the Compliance Order confirmed without further proceedings, you must file a written answer to the Complaint, which may include a request for a hearing. Your answer (if any) must be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York, 10278, and must be filed within thirty (30) days of your receipt of this Complaint, Compliance Order, and Notice of Opportunity for Hearing. Your answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint, and should contain (1) a clear statement of the facts which constitute the grounds of your defense, and (2) a concise statement of the contentions which you intend to place in issue at the hearing.

The denial of any material fact, or the raising of any affirmative defense, will be construed as a request for a hearing. Failure to deny any of the factual allegations in the Complaint will be deemed to constitute an admission of

the undenied allegations. Your failure to file a written answer within thirty (30) days of receipt of this instrument will be deemed to represent your admission of all facts alleged in the Complaint, and a waiver of your right to a formal hearing to contest any of the facts alleged by the Complainant. Your default will result in the final issuance of the Compliance Order, and assessment of the proposed civil penalty, without further proceedings.

#### INFORMAL SETTLEMENT CONFERENCE

Whether or not you request a hearing, the EPA encourages settlement of this proceeding consistent with the provisions of the Act. At an informal conference with a representative of the Complainant you may comment on the charges and provide whatever additional information you feel is relevant to the disposition of this matter, including any actions you have taken to correct the violation, and any other special circumstances you care to raise. The Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with you in such conference, or to recommend that any or all of the charges be dismissed, if the circumstances so warrant. Your request for an informal conference and other questions that you may have regarding this Complaint, Compliance Order, and Notice of Opportunity for Hearing should be directed to Jodi Lee Alper, Attorney, General Enforcement Branch, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York, 10278, telephone (212) 264-1196.

Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued as an alternative to or simultaneously with the adjudicatory hearing procedure. However, no penalty reduction will be made simply because such a conference is held. Any settlement which may be reached as a result of such conference will be embodied in a written Consent Agreement and Final Compliance Order to be issued by the Regional Administrator of EPA, Region II, and signed by you or your representative. Your signing of such Consent Agreement would constitute a waiver of your right to request a hearing on any matter stipulated to therein.

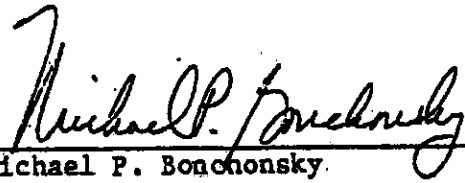
#### RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an answer requesting a hearing or requesting an informal settlement conference, you may choose to comply with the terms of the Compliance Order, and to pay the proposed penalty. In that case, payment should be made by sending to the Regional Hearing Clerk, EPA, Region II, a cashier's or certified check in the amount of the penalty specified in the "Proposed Civil Penalty" section of this instrument. Your check must be made payable to the United States of America.

DATED: New York, New York

COMPLAINANT:

February 24, 1982.

  
Michael P. Bonchonsky  
Acting Director  
Enforcement Division  
U.S. Environmental Protection Agency  
Region II  
26 Federal Plaza  
New York, New York 10278

TO: Louis A. Kaplan  
Vice President  
Cellomer Corporation  
46 Albert Avenue  
Newark, New Jersey 07105

cc: George Tyler, Esq.  
Assistant Commissioner for  
Environmental Management  
New Jersey Department of  
Environmental Protection

CERTIFICATE OF SERVICE

This is to certify that on the 24th day of February, 1982 I served a true and correct copy of the foregoing Complaint by certified mail to Louis A. Kaplan, Vice President, Cellomer Corporation, 46 Albert Avenue, Newark, New Jersey 07105. I handcarried the original foregoing Complaint to the Regional Hearing Clerk.

  
VICTORIA L. McDONALD  
Clerk Stenographer

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U.S. ENVIRONMENTAL PROTECTION AGENCY  
General Enforcement Branch  
Room 437  
Region II  
28 Federal Plaza  
New York, New York 10007

10/15/82 input  
+ file  
OCT 20 1982

(212) 264-9898

CERTIFIED MAIL--  
RETURN RECEIPT REQUESTED

Frederic C. Ritger, Jr., Esq.  
Franzblau & Falkin  
50 Commerce Street  
Newark, New Jersey 07102

NJ0048797195

Re: Callonar Corporation  
Docket No. II RCRA-82-0110

Dear Mr. Ritger:

Enclosed is a conformed copy of the Consent Agreement and Final Compliance Order in the above-captioned proceeding, signed by the Regional Administrator of the U.S. Environmental Protection Agency.

Upon your receipt of this Order, the sixty-day period for payment of the civil penalty commences. Please arrange for payment of this penalty according to the instructions given in the Order.

Sincerely yours,

Bruce R. Adler  
Attorney  
General Enforcement Branch  
Enforcement Division

Enclosure

cc: Gerard Burke  
Office of Enforcement  
New Jersey Department of Environmental  
Conservation

bcc: Tom Taccone, 2PM-PA ✓  
Regional Hearing Clerk  
Robert Brook (WH-527)

ATTACHMENT R-1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

In the Matter of

CELLOMER CORPORATION,

Respondent.

Proceeding Under Section 3008 of the  
Solid Waste Disposal Act, as amended.

CONSENT AGREEMENT  
AND  
FINAL COMPLIANCE ORDER

Docket No. II RCRA-82-0110

PRELIMINARY STATEMENT

This administrative proceeding was instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended, 42 U.S.C. §6901 et seq. ("the Act"). [Note: Among the statutes amending the Act is the Resource Conservation and Recovery Act, 90 Stat. 2795, P.L. 94-580 (1976).]

The Director of the Enforcement Division of the U.S. Environmental Protection Agency ("EPA"), Region II, Complainant in this proceeding, issued a Complaint, Compliance Order and Notice of Opportunity for Hearing to Respondent Cellomer Corporation on February 24, 1982. Said document charged Respondent with certain violations of Sections 3004, 3005, and 3010 of the Act, 42 U.S.C. §§6924, 6925 and 6930 respectively and the regulations promulgated thereunder.

This Consent Agreement and Final Order is being entered into by the parties in full settlement of all liabilities which might have attached as a result of the proceedings. Respondent has read the Final Order set out herein, and, without any admission of the allegations of violations, believes it to be

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reasonable and consents to its issuance and its terms. Respondent furthermore waives its right to receive a hearing on the above-referenced Final Consent Order, and agrees to pay a penalty in the amount called for in the Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent owns and operates a facility located at 46 Albert Avenue, Newark, New Jersey ("the facility").
2. By notification dated August 11, 1980, Respondent notified EPA that it generates, treats, stores, or disposes of hazardous waste, as that term is defined in Section 1004(5) of the Act, 42 U.S.C. §6904(5) and in 40 CFR §261.3. Respondent has not requested a permit to conduct its hazardous waste activities as required by Section 3005 of the Act.
3. On or about September 1, 1981, an inspection of the facility was conducted by duly designated representatives of EPA pursuant to Section 3007 of the Act, 42 U.S.C. §6927. Said inspection was conducted for the purpose of enforcing the EPA regulations for hazardous waste management, 40 CFR Parts 260-265 (published in 45 Fed. Reg. 33063 et seq., May 19, 1980, and as later amended) promulgated pursuant to Subtitle C of the Act, 42 U.S.C. §6921 et seq.
4. The above-referenced inspection revealed that Respondent's facility was being used for the generation and storage of hazardous waste.
5. Section 3005 of the Act and 40 CFR §122.22 requires all owners of hazardous waste treatment, storage or disposal ("TSD") facilities to submit a RCRA permit application to the Regional Administrator of the applicable EPA Regional Office.

6. The above-referenced inspection revealed that storage of hazardous waste containers and tanks was taking place at Respondent's facility. These hazardous wastes include spent solvents, flammable alkyd resins and mineral spirits. This activity requires the submittal of a RCRA Part A permit application pursuant to 40 CFR §122.22. Respondent has to date failed to submit such permit application and is therefore in violation of 40 CFR §122.22.

7. 40 CFR §265.31 requires that a TSD facility be maintained to minimize the possible release of hazardous waste into the environment. During the above-referenced inspection, spilled hazardous waste (specifically, alkyd resins and waste solvents) was noted on the soil throughout an unpaved area where drums and a series of subsurface tanks, including a waste tank, are located. Respondent is therefore in violation of 40 CFR §265.31.

8. 40 CFR §265.171 provides that if a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator of the hazardous waste facility must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with 40 CFR Part 265. At the time of the above-referenced inspection, approximately 20 drums storing hazardous flammable alkyd resin wastes were leaking, rusting, uncovered and in poor condition. Respondent had failed to transfer the wastes in these drums to other drums which were in good condition, and has failed to manage these drums in any other appropriate manner. Respondent is therefore in violation of 40 CFR §265.171.

9. 40 CFR §262.11 requires that any person who generates any solid waste "must determine if that waste is a hazardous waste". This determination was to have been done by either: (1) testing the waste according to the methods set forth in Subpart C of 40 CFR Part 261, or (2) applying knowledge of the hazard

characteristic of the waste in light of the materials or the process used. Communications with Respondent indicate that no testing has been performed on a filter aid which contains varnish and alkyd resins and is being disposed of as domestic waste. No additional determination has been made as to whether the waste is hazardous. Respondent is therefore in violation of 40 CFR §262.11.

FINAL CONSENT ORDER

Based upon the foregoing, and pursuant to Section 3008 of the Act, and Section 22.18 of the Consolidated Rules of Practices Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR §22.18, it is hereby ORDERED that Respondent shall hereinafter comply with all relevant regulations at 40 CFR Parts 261 through 265. Specifically:

1. Respondent shall, by no later than thirty (30) days after the effective date of this Order, submit a Part A permit application for hazardous waste activities at the facility in compliance with 40 CFR §122.22.
2. Respondent shall, by no later than thirty (30) days after the effective date of this Order, maintain the facility to minimize the possible release of hazardous waste into the environment. Specifically, spills and run-off of hazardous wastes in the tank storage area, and soils contaminated thereby, must be removed in compliance with 40 CFR §265.31.
3. Respondent shall, by no later than thirty (30) days after the effective date of this Order transfer hazardous waste from containers which are leaking, badly damaged, or corroded through to containers which are in good condition in compliance with 40 CFR §265.171.

4. Respondent shall, by no later than thirty (30) days after the effective date of this Order determine whether its filter aid containing varnish and alkyd resins is a hazardous waste in accordance with 40 CFR §262.11. Specifically, a determination shall be made as to whether the filter aid has the hazardous waste characteristics of ignitability or EP toxicity pursuant to 40 CFR Part 261 Subpart C.

Within sixty (60) days of receipt of a signed and executed copy of this Final Consent Order, Respondent shall pay by cashier's or certified check a civil penalty for the violations cited herein in the amount of eight thousand dollars (\$8,000.00), payable to the Treasurer, United States of America. Such payment shall be remitted to the Regional Hearing Clerk, EPA, Region II, 26 Federal Plaza, New York, New York, 10278. Failure to remit such payment in full will result in the referral of this matter to the United States Attorney for collection.

SO ORDERED, EFFECTIVE IMMEDIATELY.

CONSENT

Respondent has read the foregoing Order, and, without any admission of liability, believes it to be reasonable, and consents to its issuance and to its terms.\*\* Furthermore, Respondent explicitly waives its right to request a hearing on this Order, and agrees to pay the penalty amount called for in the Order.

RESPONDENT:

BY:

John J. [Signature]  
CELLOMER CORPORATION

DATE:

Aug. 23, 1982

\*\*Respondent further asserts that as of the date of its consent, it is in compliance with all applicable regulations.

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COMPLAINANT:

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WARREN H. LLEWELLYN  
Acting Director  
Enforcement Division  
EPA - Region II

DATE:

10-6-82

The Regional Administrator of EPA, Region II concurs in the above-cited findings. The foregoing Order as agreed upon by the parties is hereby approved and issued, effective immediately.

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JACQUELINE E. SCHAFER  
Regional Administrator  
U.S. Environmental Protection Agency  
Region II  
26 Federal Plaza  
New York, New York 10278

DATE:

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